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**IN THE
Supreme Court of the United States**

OCTOBER TERM, 1946

No. 1060

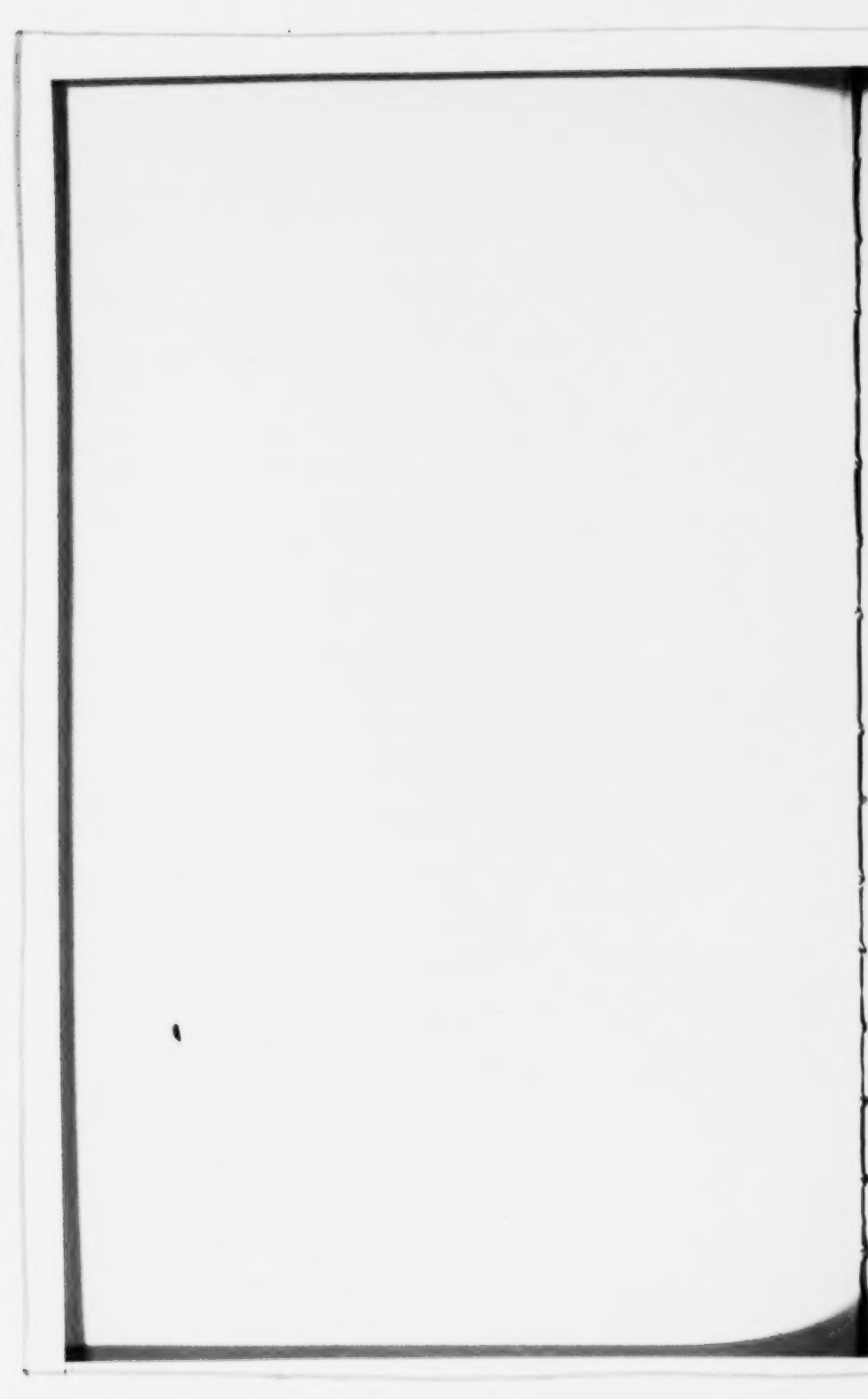
**H. WILLIAM KLARE,
Receiver of Detroit Bankers Company,
Petitioner,**

vs.

**THE UNITED STATES,
Respondent**

PETITIONER'S REPLY BRIEF

✓
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PETITIONER'S REPLY BRIEF

I.

It is a very serious Matter—for a Department of the Government to deliberately attempt to escape an accounting of admitted Trust Funds—disbursed contrary to specific Acts of Congress.

II.

A. The Spending of \$3,500,000 for Private Attorneys' Services.

Congress explicitly prohibited the spending of assets of a closed National Bank—for private attorneys services rendered the Bank's receiver—unless such hiring and compensation was first approved by the Attorney General of the United States.

See—

Title 5, USCA. Sections 330, 306, 312, 314

Referred to in Petitioner's Main Brief, page 24.

Plaintiff's Petition alleged such expenditure—without prior approval by the Attorney General—and the defendant's demurrer admitted it.

See Petition, paragraph (16), page 13.

B. The Spending of \$1,251,000 for Clerk's Hire in Washington the Department of the Treasury.

By Specific Acts of Congress—

Title 5 of USCA, Sections 45, 46 and 66—See Petitioner's Main Brief, page 23—

Congress explicitly prohibited any Department in Washington to expend, at the "seat of Government," any moneys of any kind—

unless a specific appropriation was first made by Congress.

See Title 5, USCA, Section 46.

Plaintiff's Petition for accounting alleged such expenditures and their concealment by defendant—see paragraph 42, pages 28 and 29 and

defendant's demurrer admits such expenditures made for so-called "Clerks' hire" in the Treasury in Washington in the years of 1933 to 1939.

III.

Defendant's Brief Discussed—

Defendant's only ground for opposing Review by this Honorable Supreme Court

is the claim that a Federal Court Order had "divested" Plaintiff's predecessor Receiver of all interest in his own Holding Company.

To this Objection—Plaintiff respectfully submits—

(a) Plaintiff Receiver was appointed by the State Court of Michigan for the express purpose of prosecuting this accounting action.

The State Court's order entered on June 26, 1945, is made a part of the record, as Exhibit "A" to Plaintiff's petition filed in the Court of Claims.

See Record—page 34.

(b) The so-called Federal Court order of July 29, 1938 referred to by defendant's counsel on page 2 of its brief (opposing issuance of Writ of Certiorari) is not a part of the record in this case—

but was improperly printed in the Government's brief in the Court of Claims—see pages 127 to 134 thereof.

(c) The Court of Claims did not rest its decision on this Federal Court Order—but rather on the ground that Plaintiff's Holding Company did not itself pay the \$20,000,000 of stock assessments to the Bank's Receiver—but its stockholders did.

For answer to this, please see plaintiff's main brief in this Supreme Court at pages 14 to 19.

IV.

Federal Court Order—

(a) The Federal Court's order of July 29, 1938, did not "divest" the Holding Company or Plaintiff Receiver of all interest in First National Bank-Detroit.

(b) The facts are:

On August 24, 1938—a stipulation was entered into between Plaintiff Receiver's predecessor and the closed National Bank Receiver that:

"1. Party of the first part agrees to and does hereby assign, transfer, set over and deliver all his right, title and interest and all right, title and interest of said Detroit Bankers Company in and to said 249,897 shares of the capital stock of First National Bank-Detroit unto the party of the second part, who hereby agrees to hold said shares of stock hereinabove described as custodian for and on behalf of the shareholders of the Detroit Bankers Company.

In Witness Whereof the parties have hereunto subscribed their names this 24th day of August, 1938.

(s) Ernest W. Hotchkiss,
Receiver of Detroit Bankers Co.,
Party of the First Part.

B. C. Schram,
Receiver of First National Bank-
Detroit,
Party of Second Part."

NOTE: Copied from Defendant's Brief submitted to Court of Claims, page 135.

(c) This stipulation and settlement agreement were referred to in the above mentioned Federal Court Order of July 29, 1938, which order reads in part, as follows:

"In the District Court of the United States for the Eastern District of Michigan, Southern Division

No. 12793

In the Matter of the Liquidation of First National Bank-Detroit, a National Banking Association.

Order authorizing Receiver to compromise and Settle the Indebtedness of Detroit Bankers Company and Subsidiaries.

At a Session of this Court held in the Federal Building in the City of Detroit, Michigan, this 29th day of July 1938.

Present: Hon. Edward J. Moinet, District Judge.

• • •

The Court being fully advised in the premises and it appearing to the Court that said settlement is for the best interests of the creditors and depositors of First National Bank-Detroit.

It is hereby ordered, adjudged, and decreed that said B. C. Schram, Receiver of First National Bank-Detroit, be, and he is hereby authorized *to enter into a settlement with Ernest W. Hotchkiss*, Receiver of Detroit Bankers Company, W. J. Linton, Receiver of First Detroit Company, and Assets Realization Company, as outlined in detail hereinbelow, and said B. C. Schram, Receiver, is further authorized to do all acts and execute all instruments that may be necessary to carry out fully the terms of said settlement agreement:

• • •

3. The Receiver of Detroit Bankers Company is to transfer and deliver unto the Receiver of First National Bank-Detroit the shares of the capital

stock of First National Bank-Detroit now held by said Detroit Bankers Company, and said Receiver is to hold said shares of stock as custodian for the shareholders of Detroit Bankers Company. * * *

16. The Receiver of Detroit Bankers Company is to hold in reserve sufficient cash to pay all preferred claims if ultimately allowed, and to pay a 5% dividend to all other general creditors' claims if ultimately allowed; the Receiver of First National Bank-Detroit is to coöperate with the Receiver of Detroit Bankers Company in effecting an early and expedient termination of said receivership.

Edward J. Moinet,
District Judge."

(Certificate of the Clerk of the District Court.)

NOTE: As copied from Pages 127 to 134 of Defendant's said Brief.

Here follows a list of many specific amounts and disputed items—but no reference whatever to the subject matter of the accounting asked in the case at bar—consisting of \$3,500,000 for attorneys' fees and \$1,250,000 for Clerks' hire in Washington.

The Defendant's Demurrer admits these claims and disbursements made by the Bank Receiver of the closed Bank's funds were totally unknown to the Holding Company Receiver.

See Paragraphs 42 to 48 of the Petition, Record pages 28 to 32, admitted by the defendant's demurrer.

V.

The remainder of defendant's brief is mere repetition of immaterial matters, taken from its Brief in the Court of Claims—

which that Court paid no attention to.

It is respectfully submitted the Petition for Writ of Certiorari should be granted by this Honorable Court.

Respectfully submitted,

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*Attorney for Petitioner Klare,
Receiver.*

1607 Ford Building,
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